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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
MARIALUZ A. BANARES,  
Plaintiff,  
v.  
WELLS FARGO BANK N.A., et al.,  
Defendants.

Case No. 13-cv-04896-VC

**ORDER GRANTING MOTION TO  
DISMISS**

Re: Dkt. No. 30

12 Marialuz Banares has sued Wells Fargo and HSBC as Trustee for Wells Fargo Asset  
13 Securities Corporation Mortgage Pass-Through Certificates, Series 2007-8, alleging that the  
14 defendants have unlawfully initiated foreclosure proceedings against her. The defendants  
15 previously filed a motion to dismiss Banares' initial complaint, which Judge Chen granted, with  
16 leave to amend. In his order, Judge Chen stated, "Plaintiff is cautioned that any amendment must  
17 account for the Court's ruling herein and be made in good faith in compliance with Fed. R. Civ. P.  
18 11." Dkt. No. 17. The First Amended Complaint is virtually identical to the original complaint and  
19 only differs in two respects.

20 First, Banares has added the allegation that the defendants are wrongfully foreclosing on  
21 her property because neither of the defendants is a "person entitled to enforce the note" under  
22 several provisions of the California Commercial Code. But the California Commercial Code is not  
23 applicable to nonjudicial foreclosures in California. Rather, nonjudicial foreclosure are  
24 exhaustively governed by California Civil Code § 2924 *et. seq.* *See Debrunner v. Deutsche Nat.*  
25 *Trust Co.*, 204 Cal.App.4th 433, 440 (2012).

26 Second, Banares has added more to her claim that Wells Fargo violated RESPA, 12.  
27 U.S.C. § 2601 *et seq.*, by not responding to what Banares alleges was a "Qualified Written  
28 Request" seeking details about the servicing of her loan. In Judge Chen's prior order, he found that

1 "[p]laintiff has plausibly alleged that the letter was a QWR," but that she failed "to allege how  
2 Wells Fargo's failure to respond resulted in damages." To state a claim for a RESPA violation,  
3 Banares must show that Wells Fargo's failure to respond caused her actual harm. *See, e.g.*,  
4 *Tamburri v. Suntrust Mortgage, Inc.*, 875 F. Supp. 2d 1009, 1014-15 (N.D. Cal. 2012); *Dang v.*  
5 *Residential Credit Solutions, Inc.*, No. C-14-02587-RMW, 2014 WL 5513753, at \*7-8 (N.D. Cal.  
6 Oct. 31, 2014). In her FAC, Banares adds more detail, claiming she suffered a reduction in credit  
7 and will need to retain an attorney and a loan auditor to determine if Wells Fargo had the authority  
8 to collect her mortgage payments. But all of her alleged damages are related to her overall theory  
9 of wrongful foreclosure, namely, that the various assignments of her loan were ineffective and that  
10 neither Wells Fargo nor HSBC had the authority to foreclose. Because the Court has dismissed  
11 Banares' wrongful foreclose theory, and because Banares does not allege separate and independent  
12 damages that stem directly from Wells Fargo's failure to respond to her questions about the  
13 servicing of her loan, Banares' RESPA claim is dismissed.

14 For these reasons, and for all the reasons identified in Judge Chen's prior order, the case is  
15 dismissed. And because Banares has been given a chance to amend and yet filed a virtually  
16 identical complaint, the case is dismissed with prejudice.

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18 **IT IS SO ORDERED.**

19 Dated: February 4, 2015

20   
21 VINCE CHHABRIA  
22 United States District Judge

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